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Hand delivered

May 7, 2014

Mr. Tucker Smith
Corps of Engineers, Norfolk Regulatory Office
803 Front Street
Norfolk, VA. 23510

Re: Centerville Properties Development, JPA 2000-1688

Dear Tucker:

Thank you for your comments regarding our draft submission as well as providing the Section 404(B)(1) Guidelines from the Savannah District for our reference. As recommended, we have reformatted the supplemental alternatives analysis for the Centerville Properties based on this guidance.

Where appropriate, we have addressed your comments in the Supplemental JPA Submission (SJPA) provided and have indicated as such in this letter. Additional information and/or responses not specifically germane to the separate narrative are addressed here in greater detail.

Corps Comments

1. **ARNI designation:** The proposed impact area is not an ARNI, and the concerns that have been raised mainly focus on the potential for impacts to sensitive areas downstream. As the Corps indicated in the March 2008 denial letter, the FWS commented that "while the forested community on this site is not rare, it buffers the unique wetland resources downstream."

The Corps speaks in generalities about the overall functions provided by stream headwaters, similarly situated wetlands, and wetlands in general within the review area. However, they do not speak to how the onsite wetlands have more than a speculative effect on the downstream North Landing system. The project provides for implementation of extensive measures including the use of Low Impact Development Technologies, Comprehensive Storm Water Management Systems and Compensatory Mitigation to preclude any potential to adversely affect Stumpy Lake or the downstream system.

The Wetland Function Assessment (WFA) prepared by MSA, P.C. empirically establishes that the wetlands proposed to be impacted do not provide unique or significant function and that the proposed conversion of farm fields to onsite mitigation will, in fact, improve the impacts to more sensitive areas downstream. Additionally, wildlife and habitat concerns are addressed by the preservation of a wildlife corridor in perpetuity as required by our Virginia Water Protection Permit.

A detailed analysis of ARNI considerations is included in Section 5 of the SJPA, and the complete WFA can be found in Section 4.

2. **History of ownership:** Tri-City Properties, LLC owns the 428+ acre parcel that is the subject of this permit request, with the exception of the 20 acre park site (Parcel 10-A) that was conveyed to the City of Chesapeake as a proffered park site on 11-13-1997.

Additional details and documentation of park transfer are included in Section 1-A-ii of SJPA and in S1: Exhibit A.1.

3. **Land cost considerations:** In previous alternative analysis submissions, Tri-City has used the \$250,000 transfer tax as the initial cost of the land for the calculations per the Corps request, with the assertion that we do not agree with this figure as it does not reflect the actual investment in the land. Further, we have included the cost of Tulloch ditching as a reasonable expense.

Pursuant to the findings of the U.S. Court of Appeals, D.C. Circuit in *Sierra Club v. Van Antwerp* (Case No. 10-5284), the court found that the Fair Market Value rather than the developer's acquisition cost of the land is a reasonable basis for the alternative analysis and that 8% is reasonable as a minimum rate of return.

Detail of the current land cost calculation is included in Exhibit O of Supplement 2.

4. **Wetland functional assessment:** The WFA has been expanded and now includes a full functional analysis of both the potentially impacted wetlands as well as the benefits that the proposed onsite mitigation will provide to the downstream North Landing system. Additional documentation is provided on the methodology selection and implementation process.

The expanded WFA is included in Section 4 of the SJPA.

5. **Aerial deposition of pollutants such as nitrogen:** The Corps' conclusions regarding the denitrification and carbon sequestration functions currently being performed by the wetlands

proposed for development are not supported by empirical data, are based on speculation and conjecture, and contain an overly broad exaggeration of the potential adverse effects. The conclusions lack site-specific supporting data that they are, in fact, reasonably foreseeable in light of the applicants proposed mitigation.

The rate of carbon sequestration on a given acre of land will vary extensively depending on site-specific conditions such as positioning within the landscape, type and amount of vegetation, age, type of soils, and hydrology. Seasonally flooded and wetter vegetated wetlands are rated as high for the carbon sequestration function, while drier seasonally saturated wetlands are assigned a moderate rating (Predicting Wetland Functions at the Landscape Level for Coastal Georgia Using NWI Plus Data). The subject wetlands consist of seasonally saturated forested wetlands which due to short infrequent hydro periods and extensive dry periods during the growing season provide only moderate carbon sequestration. The property is generally flat, with only micro-topographic elevation changes. Underlying soils are described as silt loams in the Soil Survey of Norfolk County, Virginia. The amount of moisture the soil can hold and the amount of water that can be fixed by the onsite vegetation dictate the amount of water storage available on the property. There is limited potential for ground water recharge or storage of surface water as much of the water is lost through evapo-transpiration. Water availability onsite is primarily dictated by rainfall. Proposed mitigation will provide higher function due to increased acreage, improved hydrology and organic soils.

A significant benefit of the proposed development is that it will include an extensive storm water runoff management system that will significantly improve storm water runoff management both for the subject property and the surrounding area and will substantially reduce nitrogen and phosphorous pollution entering the downstream estuary.

See Sections 4 and 5 of the SJPA for additional details.

6. **Hunting:** A portion of the 428+ acres will be leased to The Virginia Sportsmen's Foundation, a non-profit 501(c)(3) whose mission is: "promoting Virginia's outdoor traditions, including hunting, fishing and natural resource conservation, the organization provides hunting and fishing opportunities for Wounded Warriors and military veterans, as well as outdoor education for first-time hunters." The area of the current proposed development, however, is adjacent to a school and existing housing and has no hunting value due to its proximity to these developments.

See Section 1-B of the SJPA for a full analysis of public interest considerations.

7. **LID:** The upper strata of the soil profile consist of soils that have low permeability and lack the opportunity to perform significant groundwater recharge. However, as confirmed by soil boring test performed by McCallum Testing Laboratories Inc., the underlying soils are

of high permeability and hydraulic conductivity and provide an excellent opportunity for the use of LID storm water technologies. LID technologies such as engineered vegetated swales and wet storm water detention ponds will substantially enhance the post development opportunity for groundwater recharge and water quality, and the effects of storm water discharge will be fully mitigated onsite.

Section 3-B-i of the SJPA addresses the LID technologies proposed and an evaluation of their potential benefits.

8. **Mitigation site concerns:** To address mitigation site concerns, Tri-City asked MSA to evaluate the expected impact of the proposed mitigation, using the same methodology applied in the Wetland Function Assessment. MSA concluded that there will be an immediate environmental benefit from the cessation of farming operations on the proposed mitigation site and that the mitigation site design will restore the buffering and water quality treatment functions for a portion of the nearby agricultural lands, providing long term environmental benefit.

Further details regarding the mitigation site and its projected benefits are included in Section 3-C-i and in the WFA in Section 4 of the SJPA.

9. **Spoils of Tulloch ditching:** No soils were dumped on the portions of the farm fields proposed for mitigation; doing so would have made the land unsuitable for agricultural use. Spoils were deposited in fields closer to Elbow Road.
10. **Cost of mitigation:** MSA has provided estimates on the cost of mitigation that has been incorporated into the alternatives analysis of the proposed plan in Section 3-A-iv of the SJPA.
11. **Applicability of onsite mitigation:** The proposed onsite mitigation complies with the Final Mitigation Rule. Full details of the proposed mitigation plan are included in Section 3-C of the SJPA.
12. **Extent/location of proposed preservation area:** Per the Wetland Compensation Requirements of the VWP Individual Permit, Tri-City is required to provide "the preservation of a minimum of 145 acres of palustrine, forested wetlands on the permittee's property directly adjacent to and east of the project site." The land must also be adjacent to Stumpy Lake in a configuration which provides a continuous wildlife corridor in perpetuity.

The full VWP Permit #00-1688 is included as Exhibit B.1 of Supplement 1 of the SJPA.
13. **Prior enforcement action:** No enforcement action has been initiated by the EPA.

The EPA did file an administrative compliance order (AO) in 2000 against TransAmerica Services, alleging a violation of the Clean Water Act relative to Tulloch ditching.

TransAmerica categorically denied that there had been a re-deposit of dredge or fill material and fully cooperated with the EPA, who took no subsequent enforcement action. At all times, the applicant has maintained that any work conducted on the site was done with full awareness of the regulations, and extreme care was taken to remain within legal constraints.

Additionally, any applicable statute of limitations with regard to this AO has expired. On Feb. 27, 2013, The United State Supreme Court in GABELLI et al. v. SECURITIES AND EXCHANGE COMMISSION issued a unanimous and important decision clarifying the statute of limitations applicable to most federal government civil penalty enforcement cases. The Court held that the five-year limitations period under 28 U.S.C. § 2462 begins to run when the government's civil penalty claim accrues, i.e., when the defendant's conduct that gives rise to the civil penalty claim occurs or is complete. The statute does not allow the government to delay the triggering of the five-year limitations period based on the so-called "discovery rule." Citing former Chief Justice John Marshall, the Court stated that it "would be utterly repugnant to the genius of our laws if actions for penalties could 'be brought at any distance of time.'" The court further stated: "Statutes Of Limitations are intended to 'promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.'"

Therefore, the ability to take enforcement action on the AO filed in 2000 is outside of the statute of limitations, did not preclude the Corps from processing an earlier version of this permit application to denial on March 3, 2008, and has no bearing on the pending permit application.

14. **City zoning, proffers and Elbow Road:** Any potential proffer amendments by the City of Chesapeake would be related to school site, park improvements, and offsite road improvements due to reductions attributable to smaller development than was originally contemplated, but would not affect the location or size of the proposed development.
15. **Southern parcel:** Tri-City advised the Corps that a 20-acre parcel was conveyed to the City for a park and an adjacent parcel was reserved as a school site. Parcel 10-A Trans America Services Inc., 20 Acres is owned by the City of Chesapeake Tax Parcel- 0390000000381 Deed Book 3576 Page 342, Map Book 3016 Page 798, Transfer Date 11/13/1997. Ownership confirmation is attached.

Tri-City has never represented that it did not own any of the farm fields adjacent to Elbow Road, only that the 20-acre park site had been previously conveyed.

16. **City's plans for school or park site:** The City may require improvements on the park site as part of the proffer requirements. The City has rejected the Elbow Road site for a school, and the alternative analysis of the proposed development includes \$500,000 to purchase a suitable offsite school site to fulfill the proffer requirement.
17. **Can proffered portions of property be used for project site location or mitigation?** Use of the Elbow Road uplands for development has been extensively evaluated and determined to be cost prohibitive. Further detailed analysis of the development possibility of this site is provided in Section 3-A-iii of the SJPA which demonstrates that due to economic, zoning, and safety considerations regarding Elbow Road, all versions of the Elbow Road development alternatives are financially, politically, and logistically not practicable, and therefore cannot be considered the LEDPA.

Tri-City no longer owns the park site. A portion of the farm fields are currently proposed for the mitigation site.

18. **Compliance with CWA Section 404(b)(1) Guidelines:** MSA has organized the supplemental alternatives analysis to comply with the Guideline Document used by the Savannah District in determining the Least Environmentally Damaging Practicable Alternative (LEDPA) as recently recommended by the Corps.

The proposed Project Purpose is to provide a mixed-use, multifamily community, consisting of a variety of residential opportunities, including rentals, condominium ownership, and senior over fifty-five suites, integrated with community related commercial services to support the housing needs created by the rapidly expanding commerce and employment center situated in the Greenbrier section of Chesapeake. The offsite analysis therefore reviewed potential sites located in and around Greenbrier that could reasonably service this need. The Corps has previously agreed with our site screening process. Per the March 2008 denial, the Corps stated: "We concur with the search area, [and] concur that the alternatives examined were not practicable."

Further details of the area of review are provided in Section I-F of the SJPA and in Exhibits D-1 and D-2 of Supplement 1.

EPA Comments

1. **Environmental Impact Statement:** An environmental impact statement (EIS) for this permit is neither required nor warranted. In fact, Colonel Anninos previously determined that an environmental assessment (EA) and not an EIS was the appropriate method for

evaluating this project as part of his review of the original 181-acre impact proposal. The development has since been reduced dramatically in scope, further solidifying that decision.

Appropriate and practicable compensatory mitigation measures are being provided that will reduce adverse effects to less than significant levels. The Council on Environmental Quality (CEQ) issued guidance on January 14, 2011 entitled: "Appropriate Use of Mitigated Findings of No Significant Impact. NEPA was enacted to promote efforts that will prevent or eliminate damage to the human environment. Mitigation measures can help to accomplish this goal in several ways. Many Federal agencies and applicants include mitigation measures as integral components of a proposed project's design. Agencies also consider mitigation measures as alternatives when developing Environmental Assessments (EA) and Environmental Impact Statements (EIS). In addition, agencies have increasingly considered mitigation measures in EAs to avoid or lessen potentially significant environmental effects of proposed actions that would otherwise need to be analyzed in an EIS. This use of mitigation may allow the agency to comply with NEPA's procedural requirements by issuing an EA and a Finding of No Significant Impact (FONSI) or "mitigated FONSI" based on the agency's commitment to ensure the mitigation that supports the FONSI is performed, thereby avoiding the need to prepare an EIS."

Additionally, the project has undergone a comprehensive three-year evaluation by the Virginia Department of Environmental Quality (DEQ) which included significant input from municipal leaders on issues of water quantity and quality and discussions with representatives of the Department of Game and Inland Fisheries and U.S. Fish and Wildlife regarding habitat concerns. The DEQ concluded that the proposed activity is consistent with the provisions of the Clean Water Act and State Water Control Law and will protect in-stream beneficial uses. The Virginia State Water Control Board concurred with that conclusion by approving a Virginia Water Protection Permit which was issued to Tri-City on November 21, 2003. The conditions enumerated in VWP Permit #00-1688 address no net loss of wetland acreage and functions through compensatory mitigation and success monitoring and reporting. Per the VWP Permit: "The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources."

According to Regulatory Guidance Letter 82-08: POLICY REQUIRING PERMIT TO REFLECT STATE AND LOCAL DECISIONS EXCEPT IN CASES OF OVERRIDING NATIONAL CONCERN, "the [Corps'] Regulatory Program is not to be used to "second guess" decisions made by state and local governments on such matters as zoning or land use unless there are significant issues of overriding national importance. Such issues would include national security, navigation, national economic development, water quality, and national energy needs." Of the listed factors, only water quality applies to the permit at hand, and that issue has been fully addressed by both state and local authorities. In addition to the findings included in the state permit, former Virginia Beach mayor, Meyera Oberndorf,

stated in a March 1, 2005 letter to the Corps that "the applicant made modifications to the project which alleviated the City's concerns relative to water quality and quantity issues associated with the project as they relate to the Stumpy Lake reservoir."

The importance of state and local decisions in the regulatory process is also recognized in the Clean Water Act and the Environmental Quality Improvement Act of 1970. The policy of Congress, as expressed in Section 101(b) of the Clean Water Act, is to "recognize, preserve, and protect the primary responsibilities and rights of states to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources ... It is the policy of Congress that the states ... implement the permit program under Sections 402 and 404 of this act." In the Environmental Quality Improvement Act of 1970, Section 202(b), Congress expressed the policy that the primary responsibility for enhancement of environmental quality rests with state and local government.

Additionally, in the public interest review criteria at 33 CFR 320.4(a)(2)(i), district commanders are required to consider the public and private need for a project. Section 320.4(j)(2) states: "where officially adopted state, regional, or local land use classifications, determinations, or policies are applicable to the land or water areas under consideration, they shall be presumed to reflect local factors of the public interest..." Section 320.4(j)(4) further states: "In the absence of overriding national factors of the public interest that may be revealed during the processing of the permit application, a permit will generally be issued following receipt of a favorable state determination."

"The district commander is responsible to determine when a public interest factor is of national significance and when it becomes an overriding factor in the public interest-balancing process. If a district commander proposes to make a decision on a permit application which is contrary to state or local decisions, the district commander must clearly document the significant national issues and explain how they are overriding in importance."

In this case, the findings by state and local authorities are well supported by the relevant facts and circumstances. Aquatic resources located within the boundary of the proposed development consist of seasonally saturated mixed deciduous forest that do not possess unique characteristics or functions, and are not substantially different in function or habitat value than uplands within the surrounding areas. The Centerville Property is not unlike tens of thousands of undeveloped acres of similar property in surrounding Virginia and North Carolina localities. These communities are extensive from Surry and Isle of Wight Counties south to the City of Suffolk on the west and the North Landing River on the east.

The wetlands on the subject site have been degraded and impaired over the years by human activity, including the construction of Centerville Turnpike which severed the subject wetlands from their upslope surface water inflow. Drainage from Centerville Turnpike and the area to the west has been redirected and channelized within a drainage ditch flowing through the wetlands directly into Stumpy Lake, thus depriving the subject wetlands of the opportunity to perform significant water quality functions. The man made canal to the north and the farm ditch to the south create similar impediments. Additionally, the wetlands have been further impacted by timber harvesting and hunting trails.

Due to their positioning and relative elevation, the subject wetlands receive no surface or subsurface water in-flow, are essentially precipitation dominated, are not located within a flood plain, and have minimal opportunity to store surface water. Additionally, the subject soils have low permeability and hydraulic conductivity. They lack the opportunity for significant ground water recharge and provide only a passive contribution to water quality. Subject wetlands are only of moderate quality as they were logged and ditched and are not unique or rare. The WFA prepared by MSA documents existing wetland conditions within the project site and the proposed conservation area.

Wetland impacts will be fully mitigated to less than significant levels by the onsite preservation of 145 acres, and creation and or re-establishment of wetland functions on 50 acres within the project site. Given the inherent functional limitations of the subject wetlands, it is likely that the mitigation will have functions superior to the impact site.

The Corps has disregarded a plethora of data in the record relating to Low Impact Development and Comprehensive Storm Water Management as advocated by the EPA that are proposed by the applicant to be incorporated into the development which will preclude the potential for significant discharges of sediments and nutrients. Proposed methods include: reduced road widths, reduction in the use of curb and gutter, extensive use of vegetated swales, vegetated strips as well as multi storm water detention ponds with emergent wetland perimeters, check dams and sediment basins, which will trap and retain sediments on site. The EPA Storm Water Technology Fact Sheet on Vegetated Swales issued in September 1999 is included as Exhibit I of Supplement 1.

During construction, a comprehensive storm water pollution prevention plan, as required by the VWP Permit, will be prepared and implemented and will include extensive use of erosion and sediment controls, including silt fencing, check dams, forebays and sediment basins, to retain sediments on site. All denuded areas will be re-vegetated as quickly as practicable.

To offset unavoidable adverse impacts to wetland resources, the following mitigation will be implemented to bring adverse effects to less than significant:

- 1- Rather than the traditional method of collect, pipe and discharge, storm water will be allowed to filtrate through grassy swales and settle into and be detained in multiple

BMP storm water ponds with herbaceous wetland benches, allowing pollutants to settle and biologically interact with vegetation and be slowly discharged downstream at a rate equal to or less than predevelopment flow.

- 2- 145 acres of adjacent and contiguous forested wetlands will be preserved in perpetuity by a conservation easement providing a buffer between the development and the Stumpy Lake preservation area as well as a wildlife corridor to the proposed wetland mitigation site.
- 3- Reestablishment or creation of 50 acres of like kind wetlands on adjacent prior converted croplands and cutover forest, which will revive surface water inflow from upslope wetlands. Cessation of current farming activities will immediately result in elimination of the discharge of sediments and nutrients downstream into Gum Swamp. A monitoring program backed by surety will be implemented to assure required wetland functions are achieved.

Sections 3-B and 3-C of the SJPAs provide additional information and evaluation of the proposed minimization and mitigation measures. The WFA provided in Section 4 discusses the projected benefits of the mitigation effort and its positive effects on local resources.

Given the findings by the Virginia Water Control Board, the comments from relevant agencies regarding water and habitat concerns, the reduced function of wetlands onsite as documented in the Wetland Function Assessment and the significant minimization and mitigation measures required by the state permit, there is no reasonable basis to require an EIS for the proposed development.

2. **Coordination with transportation agencies:** Throughout the nine years since the initial filing of a permit request with the Corps, there have been extensive meetings, discussions, and correspondence between the Corps and key representatives of the City of Chesapeake regarding roadway infrastructure and city planning concerns. As a result of these discussions, the alternatives involving the development of the uplands adjacent to Elbow Road have been found to be impracticable due to economic, zoning, and safety considerations. As suggested by Colonel Anninos during an August 20, 2007 meeting, the proposed development has been limited to the fragmented uplands located in close proximity to Centerville Turnpike.

As the property fronts directly onto an existing highway, no offsite wetland impacts are proposed. Onsite roadway and infrastructure wetland impacts are now limited to connecting the proposed development to the adjacent Centerville Turnpike. Further evaluation and study by transportation agencies would serve only to delay and frustrate the permitting process.

3. **Thorough study and evaluation by Federal agencies:** Federal agencies have been involved with the permitting process for the Centerville Properties for well over a decade and

requested the analysis of 18 alternatives. There has been ample study and evaluation of this project.

For further details, please refer to the SJPA and all related exhibits.

4. **ARNI:** The proposed impact area is not an ARNI, and the concerns that have been raised mainly focus on the impacts to more sensitive areas downstream. As the Corps indicated in the March 2008 denial, the FWS commented that “while the forested community on this site is not rare, it buffers the unique wetland resources downstream.”

The Corps speaks in generalities about the overall functions provided by stream headwaters, similarly situated wetlands, and wetlands in general within the review area. However, they do not speak to how the onsite wetlands have more than a speculative effect on the downstream North Landing system. The project provides for implementation of extensive measures including the use of Low Impact Development Technologies, Comprehensive Storm Water Management Systems and Compensatory Mitigation to preclude any potential to adversely affect Stumpy Lake or the downstream system. The Wetland Function Assessment (WFA) prepared by MSA, P.C. empirically establishes that the wetlands proposed to be impacted do not provide unique or significant function and that the proposed conversion of farm fields to onsite mitigation will, in fact, improve the impacts to more sensitive areas downstream. Additionally, wildlife and habitat concerns are addressed by the preservation of a wildlife corridor in perpetuity as required by our Virginia Water Protection Permit.

A detailed analysis of ARNI considerations is included in Section 5 of the SJPA, and the complete WFA can be found in Section 4.

5. **ARNI not limited to Stumpy Lake:** The record supports the alleviation of concerns regarding the impact of the proposed development on Stumpy Lake and drinking water intake. The EPA now indicates that the ARNI considerations center around potential impacts to the more environmentally sensitive areas downstream.

The 24-acre wetland area proposed to be impacted is a relatively small portion of both the 6,651-acre headwaters for the Stumpy Lake system and the 26,990-acre headwaters of the North Landing River above the Intercostal Canal. Its positioning within the landscape and small size relative to the overall watershed limits the wetland capacity of the proposed impacts to significantly influence downstream water quality. Intra-site ditches convey storm water from the wetland area without allowing significant treatment of water. Channelized storm water ditches sending offsite water through the system also bypass potential benefits that could be provided to downstream water quality, depriving the wetlands the opportunity to perform significant wetland functions, as more fully described in the expanded WFA.

Appropriate and practicable compensatory mitigation is being provided that will reduce and fully offset potential adverse impacts on the downstream North landing environmentally sensitive areas to less than significant. The project has previously undergone an exhaustive comprehensive evaluation by the Virginia Department of Environmental Quality, which concluded, and the Virginia State Water Control Board concurred by approving a Virginia Water Protection Permit, that the proposed activity is consistent with the provisions of the Clean Water Act and State Water Control Law and will protect in-stream beneficial uses. The permit addressed avoidance and minimization of wetland impacts to the maximum extent practicable. The effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to significant impairment of state waters or fish and wildlife resources. Permit conditions address no net loss of wetland acreage and functions through compensatory mitigation and success monitoring and reporting. Cessation of the farming activities will have an immediate positive impact downstream, and the proposed mitigation measures will result in long term ecological benefit.

See Section 3-B-ii of the SJPA for details of the minimization proposals and Section 5 for a full discussion of ARNI considerations.

6. **Compliance with the CWA and alternative evaluation:** MSA has organized the supplemental alternatives analysis to comply with the Guideline Document used by the Savannah District in determining the Least Environmentally Damaging Practicable Alternative (LEDPA) as recently recommended by the Corps.
7. **Alternative evaluation:** 18 onsite and 6 offsite alternatives have been fully evaluated in determining the proposed LEDPA.

See Sections 1-A-iii, 1-F, 1-G and 2 of the SJPA as well as the Exhibits D-1, D-2, and all Exhibits in Supplement 2 for analysis and documentation.

8. **Wetland functional assessment methodology:** The wetland functional analysis has been expanded. Alternative methodologies are discussed, and the chosen methodology further explained and referenced.

The expanded WFA is included in Section 4.

9. **Mitigation:** The proposed mitigation complies with the Final Mitigation Rule.

To address mitigation site concerns, Tri-City asked MSA to evaluate the expected impact of the proposed mitigation, taking into account the direction of the drainage and using the same methodology applied in the Wetland Function Assessment. MSA concluded that there will

be an immediate environmental benefit from the cessation of farming operations on the proposed mitigation site and that the mitigation site design will restore the buffering and water quality treatment functions for a portion of the nearby agricultural lands, providing long term environmental benefit.

Further details regarding the mitigation site and its projected benefit are included in Section 3-C-i of the SJPA and in the WFA in Section 4.

10. **Fate of outparcel:** Tri-City has no current plans for the use of the remaining wetlands onsite. Further, the proposed compensation for unavoidable impacts to wetland resources meets or exceeds all requirements established to ensure no net loss of wetland functions and values. While Tri-City has no current plans for the use of the remaining wetlands onsite, we retain the right to use them for whatever lawful use may be permissible in the future.

11. **Plans for additional future phases:** The proposed development is a single and complete project. It is a stand-alone, mixed use community with independent utility, direct access to a public right of way, and all required infrastructure and utilities to support the project. The project is in no way dependent on any other development. Further, the proposed compensation for unavoidable impacts to wetland resources meet or exceed all requirements established to ensure no net loss of wetland functions and values.

Tri-City has made a substantial investment in the adjacent wetlands which are being retained in their current state for whatever lawful uses may be permissible in the future. There are no current plans for use of the remaining wetlands.

12. **Effect of upgrades/permitted improvements to Elbow Road:** The City of Chesapeake's pending improvements to Elbow Road are minimal and essential for the purpose of improving public safety and have no bearing on the proposed development.

Tri-City has provided substantial documentation to the Corps regarding the extensive and cost-prohibitive improvements that would be need to be completed at the developer's expense to support any significant development along Elbow Road. This information was confirmed to Tucker Smith by Jay Tate, Director of Chesapeake's Department of Development and Permits, during an April 17, 2013 meeting on the matter.

Further details and alternative analysis is provided in Section 3-A-iii, Exhibit H of Supplement 1, and Exhibit O of Supplement 2.

13. **Update/confirm delineation:** Confirmation of the updated delineation has been requested and is pending scheduling. We understand that you will contact Matt Roth of Roth Environmental to arrange field confirmation.

We have attached the Roth Environmental wetland delineation dated 1-27-2014.

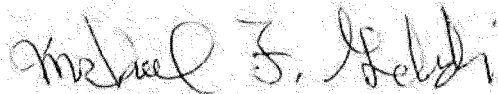
It has been noted in various places throughout this letter and related documents that although the proposed development area and impact have been reduced dramatically from that approved pursuant to the Virginia Wetlands Permit, Tri-City will comply with all aspects of the permit conditions, including but not limited to conditions related to total preservation acreage of 145 acres, mitigation at a 2:1 ratio, use of LID technologies, construction methods and monitoring, training, success monitoring, and reporting.

We remain hopeful that the combination of this letter, the expanded and reformatted Supplemental JPA Submission, the expanded Wetland Function Assessment, and the updated wetland delineation address your questions and concerns and that the Corps now has all of the documentation necessary to make a determination on the significantly reduced Centerville Properties permit application for a 53.8-acre development with a 24.6-acre impact. An overall site plan for this proposal, including the areas of mitigation and conservation, is also attached.

While we understand that we are providing you with voluminous information that will take some time to fully digest, we would like to meet with you in a couple of weeks to have a preliminary discussion about the submission and whatever additional steps are needed for the Corps to reach a final determination.

Very truly yours,

TRI-CITY PROPERTIES, LLC

A handwritten signature in black ink, appearing to read "Michael F. Gelardi".

Michael F. Gelardi
Vice President